

FIRST REGULAR SESSION

HOUSE BILL NO. 1356

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORLEW.

2651H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 510.265 and 537.675, RSMo, and to enact in lieu thereof two new sections relating to punitive damage final judgments.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 510.265 and 537.675, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 510.265 and 537.675, to read as follows:

510.265. 1. [No award of] **When punitive damages are awarded** against any defendant, **the punitive damages shall be awarded in the following manner:**

(1) The plaintiff shall receive fifty percent of the amount of an award for punitive damages that does not exceed the greater of:

[(1)] **(a)** Five hundred thousand dollars; or

[(2)] **(b)** Five times the net amount of the judgment awarded to the plaintiff against the defendant. [Such limitations]

The remaining amount of punitive damages awarded under this subsection shall be collected and distributed to the tort victims' compensation fund as provided in subdivision (1) of subsection 3 of section 537.675.

2. The method of allocation set forth in subsection 1 of this section shall not apply if the state of Missouri is the plaintiff requesting the award of punitive damages, or the defendant pleads guilty to or is convicted of a felony arising out of the acts or omissions pled by the plaintiff.

[2.] **3.** The provisions of this section shall not apply to civil actions brought under section 213.111 that allege a violation of section 213.040, 213.045, 213.050, or 213.070, to the extent

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 that the alleged violation of section 213.070 relates to or involves a violation of section 213.040,
19 213.045, or 213.050, or subdivision (3) of section 213.070 as it relates to housing.

537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:

- 2 (1) "Annual claims", that period of time commencing on the first day of January of every
3 year after December 31, 2002, and ending on the last day of that calendar year;
- 4 (2) "Commission", the labor and industrial relations commission;
- 5 (3) "Division", the division of workers' compensation;
- 6 (4) "Punitive damage final judgment", an award for punitive damages excluding interest
7 that is no longer subject to review by courts of this state or of the United States;
- 8 (5) "Uncompensated tort victim", a person who:
 - 9 (a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim whose
10 claim against the tort-feasor has been settled for the policy limits of insurance covering the
11 liability of such tort-feasor and such policy limits are inadequate in light of the nature and extent
12 of damages due to the personal injury or wrongful death;
 - 13 (b) Unless described in paragraph (a) of this subdivision:
 - 14 a. Has obtained a final monetary judgment in that lawsuit described in paragraph (a) of
15 this subdivision against a tort-feasor for personal injuries, or wrongful death in a case in which
16 all appeals are final;
 - 17 b. Has exercised due diligence in enforcing the judgment; and
 - 18 c. Has not collected the full amount of the judgment;
 - 19 (c) Is not a corporation, company, partnership or other incorporated or unincorporated
20 commercial entity;
 - 21 (d) Is not any entity claiming a right of subrogation;
 - 22 (e) Was not on house arrest and was not confined in any federal, state, regional, county
23 or municipal jail, prison or other correctional facility at the time he or she sustained injury from
24 the tort-feasor;
 - 25 (f) Has not pleaded guilty to or been found guilty of two or more felonies, where such
26 two or more felonies occurred within ten years of the occurrence of the tort in question, and
27 where either of such felonies involved a controlled substance or an act of violence; and
 - 28 (g) Is a resident of the state of Missouri or sustained personal injury or death by a tort
29 which occurred in the state of Missouri.

30 2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the
31 fund shall not lapse at the end of the biennium as provided in section 33.080.

32 3. [Any] **(1) With respect to any award for punitive damages that does not exceed**
33 **the greater of the amounts specified in subdivision (1) of subsection 1 of section 512.265,**
34 **the party receiving a judgment final for purposes of appeal for punitive damages in any case filed**

35 in any division of any circuit court of the state of Missouri shall notify the attorney general of the
36 state of Missouri of such award, except for actions claiming improper health care pursuant to
37 chapter 538. The state of Missouri shall have a lien for deposit into the tort victims'
38 compensation fund to the extent of fifty percent of the punitive damage final judgment which
39 shall attach in any such case after deducting **reasonable** attorney's fees and expenses. In each
40 case, the attorney general shall serve a lien notice by certified mail or registered mail upon the
41 party or parties against whom the state has a claim for collection of its share of a punitive
42 damage final judgment. On a petition filed by the state, the court, on written notice to all
43 interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall
44 not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The
45 state can file its lien in all cases where punitive damages are awarded upon the entry of the
46 judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive
47 damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior
48 to a punitive damage final judgment are exempt from the provisions of this section. Nothing in
49 this section shall hinder or in any way affect the right or ability of the parties to any claim or
50 lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties
51 desire.

52 **(2) With respect to any award for punitive damages that exceeds the greater of the**
53 **amounts specified in subdivision (1) of subsection 1 of section 512.265, this subsection shall**
54 **apply to the amount of the punitive damages that does not exceed the greater of the**
55 **amounts specified in subdivision (1) of subsection 1 of section 510.265. No attorney's fees**
56 **or expenses shall be deducted from the amount of the punitive damages that exceeds the**
57 **greater of the amounts specified in subdivision (1) of subsection 1 of section 510.265. In**
58 **each case, the attorney general shall serve a lien notice by certified mail or registered mail**
59 **upon the party or parties against whom the state has a claim for collection of its share of**
60 **a punitive damage final judgment. On a petition filed by the state, the court, on written**
61 **notice to all interested parties, shall adjudicate the rights of the parties and enforce the lien.**
62 **The state can file its lien in all cases where punitive damages are awarded upon the entry**
63 **of the judgment final for purposes of appeal. The state cannot enforce its lien until there**
64 **is a punitive damage final judgment. Cases resolved by arbitration, mediation, or**
65 **compromise settlement prior to a punitive damage final judgment are exempt from the**
66 **provisions of this section. Nothing in this section shall hinder or in any way affect the right**
67 **or ability of the parties to any claim or lawsuit to compromise or settle such claim or**
68 **litigation on any terms and at any time the parties desire.**

69 4. The state of Missouri shall have no interest in or right to intervene at any stage of any
70 judicial proceeding pursuant to this section, except to enforce its lien rights as provided in
71 subsection 3 of this section.

72 5. Twenty-six percent of all payments deposited into the tort victims' compensation fund
73 and all interest accruing on the principal regardless of source or designation shall be transferred
74 to the basic civil legal services fund established in section 477.650. Moneys in the tort victims'
75 compensation fund shall not be used to pay any portion of a refund mandated by article X,
76 section 18 of the constitution.

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